Supreme Court, U.S.
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Docket No. _____

SUPREME COURT OF THE UNITED STATES

CLAUS PETER SPETH, Petitioner,

versus

THE STATE OF NEW JERSEY, Respondent.

On petition for a writ of certiorari to the Superior Court of New Jersey, Appellate Division, to review its decision at Docket No. A-5655-00T1

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

May a State, consistent with the First Amendment, criminalize pure speech as being an attempt to tamper with a witness where:

(1) The speaker merely expressed to a third party a willingness to withhold honest criticism of a public official if that official would participate in a successful search for the truth, and

(2) The words were ambiguous and the surrounding circumstances support nothing worse than a bald suspicion of criminal purpose?

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REPORTS OF OPINIONS

The decision on an interlocutory appeal affirming Petitioner's conviction is published as *State v. Speth*, 323 N.J. Super. 67, 731 A.2d 1232 (App. Div. 1999), and is reproduced at Appx. 1.

An earlier trial court opinion having no relevance to this Petition is published as *State v. Speth*, 324 N.J. Super. 471, 735 A.2d 1200 (Law Div. 1997).

No other opinions in this case have been published. Those opinions and orders that are relevant to this Petition are reproduced in the Appendix.

JURISDICTIONAL STATEMENT

The Supreme Court of New Jersey's denial of a petition for certification was announced on January 23, 2003. *See* Appx. 35. No rehearing was sought. This Petition therefore will be timely if it is filed no later April 23, 2003.

Certiorari jurisdiction is established by 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment provides, in pertinent part: "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for redress of grievances."

Section 1 of the Fourteenth Amendment provides, in pertinent part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . .".

N.J.S.A. 2C:28-5.a provides, in pertinent part:

> A person commits an offense if, believing that an official proceeding or investigation is pending or about to be instituted, he knowingly attempts to induce or otherwise cause a witness or informant to:
>
> (2) Withhold any testimony, information, document or thing."

STATEMENT OF THE CASE

A. Background. Your Petitioner, Claus Peter Speth, M.D., is a triple board certified forensic pathologist. He was forced out of employment in the State Medical Examiner system (1) after he disregarded the State Medical Examiner's instruction not to testify about preliminary laboratory results in a federal preliminary injunction proceeding, and (2) after domestic automobile manufacturers protested to New Jersey's Attorney General about Petitioner's official findings of homicide when lap belts killed rear seat passengers.[1]

After being forced into private practice, Dr. Speth repeatedly embarrassed the New Jersey State Medical Examiner system by exposing mistaken cause-of-death determinations. One such case involved an official finding of death by exposure coupled with alcohol consumption for a partygoer who in fact had been sodomized and murdered. Another involved an official finding of death from a blunt trauma to the skull, even though the supposed trauma caused no deformation of the skull and the medical examiner had missed bullets in the victim's eye and brain case.

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[1] At the time of each vehicle's manufacture, (1) the manufacturer knew that lap belts alone were more dangerous for rear seat passengers than no restraints whatsoever, and (2) an available technology, lap belts with shoulder harnesses, would have saved the passengers' lives.

In 1993, Dr. Speth was retained to examine tissue specimens taken from Ronald Puttorak, whose death in custody had been declared a self-inflicted hanging. Dr. Speth found and photographed hemorrhage-bearing tissue on the Puttorak hyoid bone. The official autopsy had overlooked this hemorrhage, which suggested a fracture caused by foul play.

Less than two hours after Dr. Speth announced his discovery and returned the Puttorak specimens to the Medical Examiner's exclusive custody, the hemorrhage-bearing tissue had been cut away with a scalpel. The trial proofs established to a certainty that Dr. Speth had not excised the missing tissue because he had been monitored throughout the examination and had never used any scalpel or other sharp instrument. The State has never accounted for the undocumented disappearance of the hemorrhage-bearing tissue that Dr. Speth had photographed.

Following Dr. Speth's examination of the Puttorak specimens, the State Medical Examiner refused to allow Dr. Speth to conduct any further examinations of the Puttorak forensic evidence. The Puttorak estate then sued for access. Assistant Essex County Prosecutor Redden responded with an affidavit asserting that Dr. Speth was not being allowed the usual professional courtesies because Dr. Speth was suspected of tampering with the Puttorak specimen. That public evidence-tampering accusation had a devastating impact on Dr. Speth's professional reputation and on his ability to make a living.

The official cloud placed over Dr. Speth's head being predicated on a patently false accusation, Dr. Speth wrote to a renowned

professional colleague, Dr. Michael Baden, requesting Dr. Baden's intercession. In this March 19, 1994 letter to Dr. Baden, Dr. Speth protested that State Medical Examiner personnel were making ruinous accusations without even requesting to see the photographs which Dr. Speth had taken. Dr. Speth offered to make his photographic slides available to Dr. Baden for review because, wrote Dr. Speth, if there really is no hemorrhage-bearing tissue on the hyoid bone of the specimen, as the Redden Affidavit asserted, then the photographic slides would demonstrate that somebody in the Office of the State Medical Examiner had altered the specimen after Dr. Speth completed examining and photographing it.

A few weeks after writing this letter, Dr. Speth placed a telephone call to Dr. Baden. Dr. Speth requested that Dr. Baden arrange a three-way professional review of the Puttorak hyoid bone, with Drs. Baden, Speth and Acting State Medical Examiner Natarajan participating. Dr. Natarajan, a protegee of Dr. Baden.

Dr. Baden's immediate response expressed concern that a group of Speth supporters had alerted the media to résumé puffing by Dr. Natarajan, who had been nominated to become the State Medical Examiner. According to Dr. Baden's signed contemporaneous statement (Appx. 44):

> Doctor Speth asked me to advise Doctor Nat[arajan] and the Attorney General personnel that if we examined the Hyoid Bone together and determined that Doctor Speth was correct, and that therefore the charges against him would be dropped, the citizens' committee would

> stop criticizing Doctor Nat and the State Medical Examiner Office.

Dr. Speth's spontaneous response to Dr. Baden's concern for Dr. Natarajan's reputation, and nothing more, constitutes the N.J.S.A. 2C:28-5 "crime" for which Dr. Speth now stands convicted: Attempting to have Dr. Natarajan "withhold testimony or physical evidence." Appx. 47.

The State has never specified what "testimony" or "physical evidence" Dr. Speth purportedly wanted withheld. Moreover, although Dr. Natarajan and Dr. Baden both testified at the trial, their testimony does not make clear whether Dr. Baden ever told Dr. Natarajan about Dr. Speth's comment regarding cessation of criticism by the citizens' committee.

B. Proceedings in the New Jersey courts. On September 29, 1996, a grand jury returned a three count indictment against Dr. Speth. The first count charged that Dr. Speth tampered with evidence, namely, the Puttorak specimen; the second count charged that Dr. Speth falsely certified he discovered hemorrhage; the third count charged that "while aware that an investigation and/or court proceedings were pending, [Dr. Speth] did knowingly attempt to induce or otherwise cause Dr. Geetha Natarajan, a witness in the investigation and proceedings, to withhold testimony or physical evidence," in violation of N.J.S.A. 2C:28-5.[2] Appx. 47.

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[2] The grand jury transcript shows that Count 3 grew out of a grand juror's question about whether it was criminal for Dr. Speth to offer to

1. The trial. Counts 1 and 2 were tried to a hung jury. The same jury convicted on Count 3. After first sentencing Dr. Speth and later denying post-trial motions, the trial judge authorized the State to withhold any decision on a retrial until after the outcome of an appeal on Count 3 became known.

2. The interlocutory appeal. Petitioner appealed to the Appellate Division. In the absence of a final disposition as to all counts, that court granted leave to take an interlocutory appeal. The Appellate Division then affirmed in the view that Petitioner had offered an unlawful *quid pro quo* (Appx. 15, 22):

> Defendant's telephone conversation with Baden contained more than the expression of his desire to have the investigation stopped. It contained more than a request for a meeting. Defendant's conversation with Baden suggested in no uncertain terms that if there was a meeting and the investigation was dropped, then Natarajan would be rewarded, as the [citizens' committee] criticisms of her would stop. . . .
>
> [D]efendant's request for a meeting was accompanied by the quid pro quo, in other words, the offer of a reward to Natarajan if she saw things his way. This offer removes

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withhold criticism in a letter that he (supposedly) sent to Dr. Natarajan. Neither the grand jury evidential record nor the trial record contains such a writing or any testimonial reference to such a writing.

> all mystery from the true nature of defendant's request. . . . [T]he attempted tampering was complete upon the offer of the quid pro quo.

The Appellate Division's *quid pro quo* analysis was supported only by the following citation to authority: "*State v. Cavallo*, 200 *Conn.* 664, 513 *A.2d* 646, 649-50 (1986) (finding that the defendant offered witness a 'possible pecuniary reward' in exchange for false testimony)."[3] Appx. 15.

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[3] The obvious distinction that Dr. Speth neither offered "possible pecuniary reward" nor sought "false testimony" escaped the Appellate Division. Moreover, prior New Jersey law established that an offer to withhold criticism of a public employee involves no "undue reward" and therefore cannot be an unlawful *quid pro quo*. *State v. Scirrotto*, 115 N.J. 38, 49, 556 A.2d 1195 (1989). Moreover, N.J.S.A. 2C:28-5a(2) only reaches conduct which would "undermine enforcement of criminal justice by attempting to coerce or induce witnesses or informants not to cooperate with law enforcement." *State v. Crescenzi*, 224 N.J. Super. 142, 148, 539 A.2d 1250 (App. Div.), *certif. denied*, 111 N.J. 597, 546 A.2d 520 (1988). Because a demonstration of the truth could never undermine legitimate law enforcement, the Appellate Division's interlocutory decision drastically rewrote the prior New Jersey law. That rewriting denied Petitioner due process of law within the meaning of *Marks v. United States*, 430 U.S. 188 (1977), and *Bouie v. City of Columbia*, 378 U.S. 347 (1964).

The New Jersey Supreme Court refused to grant leave to appeal. Appx. 23.

3. The appeal from final judgment. The trial court thereafter dismissed Counts 1 and 2 with the State's consent. A direct appeal to the Appellate Division from the final judgment was summarily dismissed on the authority of the interlocutory decision. Appx. 23. The New Jersey Supreme Court then summarily dismissed Dr. Speth's ensuing appeal as of right for failing to present a "substantial constitutional question." Appx. 24.

4. The Post-Conviction Relief proceedings. Dr. Speth filed a verified Petition for Post Conviction Relief. Appx. 42. The trial judge rendered a bench opinion dismissing this petition without allowing any evidentiary hearing. Appx. 24. The Appellate Division affirmed. Appx. 26. The New Jersey Supreme Court then denied a petition for certification. Appx. 35. This Petition followed.

C. Introduction and preservation of First Amendment issues in the state courts. Petitioner is requesting this Court to review a denial of Post-Conviction Relief, so it will suffice to demonstrate preservation of the First Amendment issues in the Post-Conviction Relief proceedings.[4] Petitioner, however, had raised in substance the

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[4] New Jersey Court Rule 3:22-4 withholds Post-Conviction Relief on any grounds raised in a prior proceeding *unless* "(c) that denial of relief would be contrary to the Constitution of the United States . . .." Thus, under New Jersey law, Petitioner's First Amendment claims

First Amendment issues in his post-trial motions, his interlocutory appeal, and his appeal from final judgment. *See* Appx. 29, 32 (Appellate Division's recitation of contentions raised by Petitioner during the course of the proceedings).

Petitioner's Verified Petition for Post-Conviction Relief asserted that his conviction violated the Free Speech and Petition for Redress Clauses. Appx. 36. A supporting brief assembled many of the decisions of this Court that are cited in this Petition. *See* Appx. 37.

On appeal to the Appellate Division from the denial of Post-Conviction Relief, Petitioner argued: "The First Amendment requires clear and unambiguous evidence of criminality before pure speech can be punished." *See* Appx. 32. In support of this argument, Petitioner again cited to the federal authorities urged upon the trial court.

After the Appellate Division dismissed the appeal from denial of Post-Conviction Relief, Dr. Speth's Petition for Certification to the New Jersey Supreme Court raised and argued the following issue (Appx. 44):

> Does a criminal conviction for pure speech seeking to obtain an opportunity to demonstrate the truth to law examination of the whole record" for "clear and convincing evidence" of criminality which controlling precedents enforcement personnel violate the New Jersey and United States Constitutions' guarantees of

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remained cognizable on Post-Conviction Relief regardless of whether they had been raised or resolved on direct appeal.

free speech, especially when the lower courts never conducted the "independent require?

The Petition for Certification invoked both the Free Speech and Petition for Redress Clauses. Appx. 45.

D. State court analyses of the issue raised in this Petition. On the interlocutory appeal, the Appellant Division's lengthy opinion never mentioned, let alone analyzed, Petitioner's First Amendment contentions.

On Post-Conviction Relief, the trial judge dismissed out of hand Petitioner's asserted First Amendment violation as "patently absurd," asserting that "there's no legal authority for this argument." Appx. 25.

Beyond the quoted holding of the learned trial judge, no state court at any time has spoken to the merits of the constitutional question raised in this Petition. More particularly, the Appellate Division affirmed the denial of Post-Conviction Relief "substantially for the reasons set forth in [the trial judge's] thorough and thoughtful oral opinion." Appx. 33. The Appellate Division further held that any assertions of constitutional error inhering in "our decision affirming [Petitioner's] conviction . . . is appropriately addressed" only by a higher court. Appx. 33. The New Jersey Supreme Court repeatedly refused to address any constitutional errors inhering in the Appellate Division's decisions.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD CLARIFY THE PROPER METHOD FOR JUDICIALLY ASCERTAINING WHETHER THE CONTENT OF AMBIGUOUS SPEECH HAS BEEN MADE SUFFICIENTLY DEFINITE TO LOSE FIRST AMENDMENT PROTECTION

The New Jersey courts have treated Dr. Speth's request of Dr. Baden to arrange an opportunity to demonstrate the truth to both Dr. Baden and Dr. Natarajan as an "approach" to Acting State medical Examiner Natarajan, a government official. *See* Appx. 22 ("[t]he evil to be addressed is approaching the witness"). Petitioner's effort to clear himself of a false accusation, viewed as an approach to Dr. Natarajan, constituted a core petition for redress as well as an exercise of the freedom of speech.

The right to petition the government for redress is "among the most precious of the liberties guaranteed by the Bill of Rights." *Mine Workers v. Illinois Bar Association*, 389 U.S. 217, 222 (1967).

The Free Speech Clause already protects anything which finds protection in the Petition for Redress Clause. This double constitutional protection for complaints to government personnel highlights the vital political role of citizen grievances. "The very idea of a government, republican in form, implies a right on the part of its citizens . . . to petition for a redress of grievances." *United States v. Cruikshank*, 92 U.S. (2 Otto) 542, 552 (1875).

Except in circumstances which clearly endanger legitimate state interests, citizens cannot be punished for exercising the right of petition "without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions." *DeJonge v. Oregon*, 299 U.S. 353, 364 (1937).

Exercise of the right of petition, no less than the freedom of the press, "may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co. v. Sullivan*, 376 U.S. 255, 270-271 (1964). Nevertheless, the states cannot limit the privilege of petition except as to abusive conduct which poses a genuine and immediate threat to a State's legitimate interests. *See McDonald v. Smith*, 472 U.S. 479, 482 (1985) (imposing "actual malice" requirement to finding liability for defamatory language in a petition for redress).

The New Jersey courts without explanation have blinded themselves to these hugely important First Amendment freedoms and thereupon branded Dr. Speth a criminal. Solely by virtue of that adjudication, the State has suspended Petitioner's medical license and has created the only basis upon which Petitioner's three professional board certifications are about to be revoked.

A. This Court has indicated but not yet held that a state can constitutionally punish ambiguous speech only where clear proof eliminates the uncertainty. Dr. Speth's offhand response to Dr. Baden's concern for Dr. Natarajan's reputation is at worst ambiguous as to any criminal intent. The Appellate Division's interlocutory decision effectively acknowledged that the punished speech is indeed ambiguous. Specifically, the state court affirmed the conviction in

the view that Dr. Speth's words "***could*** lead the jury to believe that he attempted to tamper with Natarajan." Appx. 15 (emphasis added).

The exact same words could also carry a wholly innocent meaning: Dr. Speth merely expressed his natural and obvious expectation that the citizens' committee criticisms of the treatment that Dr. Speth was receiving from the State Medical Examiner's office (including a published accusation of evidence tampering) would predictably abate if the Medical Examiner's office recognized its own error and withdrew the unfounded accusation.

This wholly innocent meaning is the most reasonable interpretation of Dr. Baden's actual recounting of the conversation (Appx. 44):

> [I]f we examined the Hyoid Bone together and determined that Doctor Speth was correct, and that therefore the charges against him would be dropped, the citizens' committee would stop criticizing Doctor Nat[arajan] and the State Medical Examiner Office.

This Court has already addressed the intersection of ambiguity and First Amendment freedoms in two different contexts. One line of cases holds that ambiguities in statutory language "must be resolved in favor of adequate protection of First Amendment rights." *NAACP v. Button*, 371 U.S. 415, 438 (1963). Another line of cases strongly indicates that the First Amendment protects ambiguous speech from punishment unless other proofs clearly resolve the ambiguity.

Bond v. Floyd, 385 U.S. 116 (1966), found undiluted First Amendment protection for statements supporting draft resisters which "were at worst unclear," *i.e.*, were ambiguous, as to criminal intent and which "[standing] alone cannot be interpreted as a call to unlawful refusal to be drafted." 385 U.S. at 133. Thus, *Bond* all but held that ambiguous speech is constitutionally protected.

New York Times Co. v. Sullivan, 376 U.S. 254 (1964), by holding that actual malice, *i.e.*, knowledge of falsity or reckless disregard for the truth, must be proven to recover for defamation of a public figure, necessarily implies that ambiguous statements standing alone enjoy constitutional protection. After all, actual malice would be impossible to find in a writing containing only a debatable inference or innuendo, instead of a demonstrably untrue statement.

The mere fact of membership in a pro-Communist organization remains ambiguous as to the member's intent to violently overthrow our government, and therefore enjoys First Amendment protection. *Scales v. United States*, 367 U.S. 203, 229 (1961) (criminal intent cannot constitutionally be inferred from "association with a group having both legal and illegal aims" without "clear proof" of specific intent to undertake the illegal aims). In such circumstances, "[c]riminal intent . . . must be judged *strictissimi juris*" so as to protect against convicting the innocent. *Noto v. United States*, 367 U.S. 290, 299 (1961) (freedom of association).

This Term, *Virginia v. Black* __ U.S. __, 71 U.S.L.W. 4263 (No. 01-1107, April 7, 2003), held that the First Amendment permits criminalizing cross-burning with intent to intimidate a victim because that presents a "true threat" to public safety. But *Black* also held that

the First Amendment prohibits a statute which makes the mere fact of cross-burning *prima facie* evidence of an intent to intimidate. *Black* necessarily implies that a fact-finder may not constitutionally infer criminal intent from manifestly ambiguous words which find no clarification in the proofs, for that species of fact-finding cannot be distinguished from reliance on a statutory presumption.

Thus, without explicitly so holding, this Court consistently has refused to allow punishment of pure speech unless the record unequivocally clarifies any ambiguity in the speaker's intent. The present case provides an appropriate vehicle for the Court to determine whether the First Amendment, made applicable to the states by the Due Process Clause of the Fourteenth Amendment, forbids punishing any ambiguous speech which finds no clarification in the proofs.

B. This Court has not yet specified the proper judicial technique for determining whether ambiguous speech has been adequately clarified. The Appellate Division found that Dr. Speth offered a *quid pro quo* to Dr. Natarajan, and "This offer removes all mystery from the true nature of defendant's request." Appx. 22. In order to find such clarification of admittedly ambiguous language, the Appellate Division adopted two dubious methods for assessing the proofs.

First, the Appellate Division took the proofs in a light most favorable to the verdict. "The key, of course, is the jury's appraisal of the context, as well as the content of a statement." Appx. 16. "Here the jury appraised the facts -- as was its duty -- and rejected

defendant's suggestion that his statements to Baden were innocent." Appx. 22.

Second, the Appellate Division felt free to take Dr. Speth's statements out of their actual context, and thereby place a guilty "spin" on facts which simply do not bespeak guilt.

More particularly, the conduct which the state courts deemed criminal consisted solely of Dr. Baden's account (Appx. 44):

> Doctor Speth asked me to advise Doctor Nat[arajan] and the Attorney General personnel that if we examined the Hyoid Bone together and determined that Doctor Speth was correct, and that therefore the charges against him would be dropped, the citizens' committee would stop criticizing Doctor Nat and the State Medical Examiner Office.

On the basis of Dr. Baden's account, the Appellate Division held (Appx. 15, 22):

> Defendant's conversation with Baden suggested in no uncertain terms that if there was a meeting and the investigation was dropped, then Natarajan would be rewarded, as the [citizens' committee] criticisms of her would stop.
> * * *
> [D]efendant's request for a meeting was accompanied by the quid pro quo, in other words, the offer of a

> reward to Natarajan if she saw things his way. This offer removes all mystery from the true nature of defendant's request. . . .

Missing from the Appellate Division discussion were key components of Dr. Baden's account. The Appellate Division completely disregarded Dr. Baden's undisputed testimony about what would happen at the proposed meeting: "if we examined the Hyoid Bone together and determined that Doctor Speth was correct." The Appellate Division completely disregarded Dr. Baden's undisputed testimony that it is not uncommon for forensic pathologists who disagree about a case to meet with a third pathologist (here, Dr. Baden) acting as a "referee." *See* Appx. 42-43. The Appellate Division completely disregarded Dr. Baden's undisputed testimony that the natural consequence of any professional agreement that Dr. Speth was correct would be abandonment of a false accusation: "therefore the charges against him would be dropped." And the Appellate Division completely disregarded Dr. Baden's undisputed testimony that Dr. Speth "implored" Dr. Baden to inform the Attorney General of the proposed meeting (Appx. 43), as notifying the Attorney General hardly bespeaks a criminal purpose.

The Appellate Division's analysis cannot be reconciled with this Court's teachings. In the context of civil actions, the Court has instructed *Milkovich v. Lorain J. Co.*, 497 U.S. 1, 17 (1990):

> "[I]n cases raising First Amendment issues . . . appellate court[s] must . . . make an independent examination of the whole record" in order to make

> sure that "the judgment does not constitute a forbidden intrusion on the field of free expression."

Presumably the appellate courts have no lesser duty in criminal cases. Indeed, the Court requires "clear proof" of criminal intent as to conduct which is arguably protected by the First Amendment. *Scales, supra*, 367 U.S. at 229.

The Court, however, has not explicated the mechanism for identifying such "clear proof." The present case provides an appropriate vehicle for doing so because the Appellate Division's jurisprudence drew clarity from a record which by common sense standards is opaque.

Is a reviewing court entitled to pick and choose among the proofs, taking snippets out of context so as to purport to resolve an ambiguity "in no uncertain terms?" Appx. 15. Is a reviewing court entitled to view the proofs in a light most favorable to the verdict even when First Amendment freedoms are at issue?

Petitioner maintained in the New Jersey courts that viewing the proofs in a light most favorable to the verdict is proper when evidential sufficiency is questioned, but is wholly improper when free speech is at issue. But this Court has never so stated.

Certiorari is therefore warranted to resolve an important and recurring First Amendment question: Under what circumstances and in what manner can a fact-finder or an appellate court constitutionally impute criminal intent to ambiguous statements?

C. No First Amendment exception already recognized by this Court applies to Petitioner's words, which posed no immediate danger to the State. Under the First Amendment, the State cannot impose "censorship or punishment" on pure speech unless the speech "is shown likely to produce a clear and present danger of a serious substantive evil," *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949); or the speech is "inciting or producing imminent lawless action," *Brandenburg v. Ohio*, 395 U.S 444, 447 (1969); or the speech is obscene or constitutes so-called "fighting words." *Cohen v. California*, 403 U.S. 15, 20 (1971). *Black, supra*, reaffirms that by operation of the Fourteenth Amendment's Due Process Clause, the First Amendment bars the states from punishing any speech that presents no imminent danger to some legitimate state interest.

Dr. Speth's offhand comment to Dr. Baden does not fit into any recognized exception to the First Amendment's protection. Even if those comments are seen as falling close to the line, *Speiser v. Randall*, 357 U.S. 513 (1958), specifically protects "speech [which] falls close to the line separating the lawful and the unlawful." 357 U.S. at 526.

New Jersey's courts nevertheless have dispensed with any requirement that in First Amendment cases, the conduct in issue clearly and unequivocally bespeak an imminent threat to the peace and dignity of the State. Instead, the Appellate Division held that the purported crime became "complete" as soon as the words were spoken, even though the words were not spoken to Dr. Natarajan and

she may never have learned about the purported *quid pro quo*. Appx. 22.

Petitioner's comments to Dr. Baden presented nothing approaching a clear and present danger to the public health, safety or welfare. This case therefore presents an appropriate vehicle for this Court to reaffirm that the First Amendment does not permit criminalizing speech which presents no imminent threat to any legitimate state interest.

D. The New Jersey courts' repeated refusals to examine First Amendment issues and conform their decisions to this Court's holdings should be corrected. The New Jersey courts have rejected Petitioner's substantial constitutional arguments with no better explanation than that Dr. Speth's First Amendment contentions are "patently absurd" and "unsupported." Appx. 25. The obstinate refusal of the New Jersey courts to protect First Amendment privileges, or even to articulate any First Amendment analysis, bespeaks a jurisprudence which knowingly and intentionally disregards the Constitution and this Court's precedents.[5]

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[5] Earlier, the State obtained post-verdict perpetuation of a gag order barring Dr. Speth and his attorneys from communicating with the media in order to prevent dissemination of anything "criticiz[ing] 'the Division of Criminal Justice, the prosecutor, and the two judges who sat below,' as well as 'the State Medical Examiner's Office.'"

The Court therefore should grant certiorari in order to conform the administration of criminal justice in New Jersey to the First Amendment decisions of this Court.[6]

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the decision of the Superior Court of New Jersey, Appellate Division, at Docket No. A-5655-00T1 (Appx. 26), which affirmed the denial of Post-Conviction Relief.

Respectfully submitted,

FREDRIC J. GROSS
Counsel of Record

April 22, 2003.

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[6] Summary disposition to enable reconsideration by the Appellate Division in light of *Black*, *supra*, may be warranted.